

THE OFFICE OF CONTRACTING AND PROCUREMENT

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Chief Procurement Officer of the District of Columbia, pursuant to authority granted by sections 204 and 321 of the District of Columbia Procurement Practices Act of 1985, as amended, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code §§ 2-302.04 and 2-303.21 (2001, 2005 Supp.)) (PPA), and Mayor's Order 2002-207 (dated December 18, 2002), hereby gives notice of the adoption of the following emergency rules and of the intent to adopt final rulemaking to amend Chapter 18 of title 27 of the District of Columbia Municipal Regulations (Contracts and Procurements). The rules amend sections 1801-1803 of Chapter 18 that pertain to small purchase procedures. The final rules were previously published in the *D.C. Register* on October 3, 2003, at 50 DCR 8179.

The purpose for these rules is to implement the use of small purchase procedures by the Office of Contracting and Procurement (OCP) for purchases for the Office of the Chief Technology Officer (OCTO), as authorized by section 321 of the PPA (D. C. Official Code § 2-303.21 (2001, 2005 Supp.)).

Action was taken on August 22, 2005 to adopt the following rules on an emergency basis effective on that date. Without these emergency rules, there will not be procedures established under the PPA for OCP to make small purchase awards on behalf of OCTO. Adoption of these emergency rules to amend Chapter 18 is thus necessary for the immediate preservation of the public health, safety and welfare, by enabling OCP to make such awards under the PPA. These emergency rules will remain in effect up to one hundred twenty (120) days from the date of adoption, unless earlier superseded by another rulemaking notice or by publication of a Notice of Final Rulemaking in the *D. C. Register*.

The Chief Procurement Officer also gives notice of intent to take final rulemaking action in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. The Chief Procurement Officer will submit the rules to the Council of the District of Columbia for a sixty (60) day period of review pursuant to subsection 205(a) of the PPA (D. C. Official Code § 2-302.05(a) (2001)), and will not take final rulemaking action until completion of the 60-day review period or Council approval of the rules by resolution before the end of the review period.

CHAPTER 18

SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Sections 1800 through 1803 are amended to read as follows:

1800 USE OF SMALL PURCHASE PROCEDURES

- 1800.1 The small purchase procedures set forth in this chapter may only be used for the procurement of supplies, services, and other items when the total of the procurement does not exceed five hundred thousand dollars (\$500,000) for procurements for the Metropolitan Police Department (MPD) and the Office of the Chief Technology Officer (OCTO) and one hundred thousand dollars (\$100,000) for all other agencies, in accordance with § 321 of the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986, D. C. Law 6-85 (Act) as amended effective July 23, 2002 (D.C. Official Code § 2-303.21).
- 1800.2 A contracting officer shall not use small purchase procedures when the requirement can be met by using a requirements contract, an indefinite quantity contract, a federal supply schedule, or other required source of supply as set forth in Chapter 21 of Title 27 DCMR.
- 1800.3 A contracting officer shall not use small purchase procedures when the procurement requirement is initially estimated to exceed five hundred thousand dollars (\$500,000) for procurements for MPD and OCTO or one hundred thousand dollars (\$100,000) for all other agencies, even though the resulting award does not exceed the applicable small purchase limit.
- 1800.4 A contracting officer shall not split a procurement totaling more than the applicable small purchase limitation into several purchases that are less than the limit in order to permit the use of the small purchase procedures.
- 1800.5 A contracting officer shall not parcel, split or divide a procurement requirement, or purchase a procurement requirement over a period of time, in order to avoid the dollar limitations for use of small purchase procedures.
- 1800.6 A contracting officer shall use the small purchase procedure that is most suitable, efficient, and economical based on the circumstances of each procurement.

1801 NON-COMPETITIVE SMALL PURCHASES

- 1801.1 Except as provided in § 1801.2, a contracting officer may make a procurement for an amount of ten thousand dollars (\$10,000) or less without obtaining competitive quotations if the contracting officer determines that the purchase is in the best interest of the District government considering the price and other factors (including the administrative cost of the purchase).
- 1801.2 For small purchases for OCTO, a contracting officer may make a procurement for an amount of twenty-five thousand dollars (\$25,000) or less without obtaining competitive quotations if the contracting officer determines that the purchase is in the best interest of the District government considering the price and other factors (including the administrative cost of the purchase).
- 1801.3 A contracting officer shall distribute non-competitive small purchases equitably among suppliers. When practical, a contracting officer shall solicit a quotation from a vendor other than the previous supplier before placing a repeat order.

1802 COMPETITIVE SMALL PURCHASES

1802.1 Except as provided in §§ 1802.2, 1802.3 and 1802.4, in order to promote competition to the maximum extent practicable, and to ensure that the purchase is in the best interest of the District government, considering price and other factors (including the administrative cost of the purchase), a contracting officer shall solicit quotations as follows:

- (a) For each procurement of goods and services in an amount greater than ten thousand dollars (\$10,000) and less than or equal to twenty-five thousand dollars (\$25,000), the contracting officer shall obtain at least three (3) oral quotations from vendors for the goods and services to be purchased;
- (b) For each procurement of goods and services for more than twenty-five thousand dollars (\$25,000) and less than or equal to one hundred thousand dollars (\$100,000), the contracting officer shall obtain at least three (3) written quotations from vendors for the goods and services to be purchased; and
- (c) The contracting officer shall, unless the award is to take into consideration factors other than price or price-related factors, award the contract to the vendor providing the lowest priced quotation for the goods or services solicited.

1802.2 Except as provided in § 1802.4, for small purchases for MPD, a contracting officer shall solicit quotations as follows:

- (a) For each procurement for goods and services in the amount greater than ten thousand dollars (\$10,000) and less than or equal to twenty-five thousand dollars (\$25,000), the contracting officer shall obtain at least three (3) oral quotations from vendors for the goods and services to be purchased;
- (b) For each procurement for goods and services for more than twenty-five thousand dollars (\$25,000) and less than or equal to five hundred thousand dollars (\$500,000), the contracting officer shall obtain at least three (3) written quotations from vendors for the goods or services to be purchased; and
- (c) The contracting officer shall, unless the award is to take into consideration factors other than price or price-related factors, award the purchase order to the vendor providing the lowest priced quotation for the goods or services solicited.

1802.3 Except as provided in § 1802.4, for small purchases for OCTO, a contracting officer shall solicit quotations as follows:

- (a) For each procurement for goods and services for more than twenty-five thousand dollars (\$25,000) and less than or equal to five hundred thousand dollars (\$500,000), the contracting officer shall obtain at least three (3) written quotations from vendors for the goods or services to be purchased; and
- (b) The contracting officer shall, unless the award is to take into consideration factors other than price or price-related factors, award the purchase order to the vendor providing the lowest priced quotation for the goods or services solicited.

1802.4 If the contracting officer determines that it is impractical under the circumstances to obtain the number of quotations required under §§ 1802.1, 1802.2 or 1802.3 due to time constraints, lack of available sources, or other factors set forth in § 1802.6, or if the contracting officer, despite a good faith effort, is unable to obtain the required number of quotations, the contracting officer may obtain quotations from fewer vendors than required in §§ 1802.1, 1802.2 or 1802.3. The contracting officer must document his or

her attempts to obtain the required number of quotations.

- 1802.5 If the contracting officer determines that the best interest of the District or other factors set forth in § 1802.6 indicate that quotations should be obtained from more than the number of sources required under §§ 1802.1, 1802.2 or 1802.3, the contracting officer shall obtain additional quotations.
- 1802.6 In determining whether or not to obtain quotations from more or fewer vendors than required in §§ 1802.1, 1802.2 or 1802.3, the contracting officer shall consider the following factors:
- (a) The nature of the item or service to be purchased and whether it is highly competitive and readily available in several makes or brands, or if it is relatively non-competitive;
 - (b) Information obtained in making recent purchases of the same or similar item;
 - (c) The urgency of the proposed purchase;
 - (d) The dollar value of the proposed purchase; and
 - (e) Past experience concerning specific contractor prices.
- 1802.7 For procurements in excess of the amounts specified in § 1801, a contracting officer may award a small purchase solicitation on a sole source basis when the contracting officer determines that one (1) of the conditions in section 305(a) of the Act is satisfied, in accordance with chapter 17 of title 27 DCMR.
- 1802.8 Except for procurements made in accordance with section 1802.3, a contracting officer may orally solicit quotations for procurements valued at twenty-five thousand dollars (\$25,000) or less. However, a contracting officer shall use a written solicitation in the following circumstances:
- (a) When the contracting officer determines that obtaining oral quotations is not considered economical or practical; or
 - (b) When extensive specifications are involved.
- 1802.9 A contracting officer shall, to the greatest extent practicable under the circumstances, maximize competition for small purchases and shall not limit solicitations to suppliers of well known and widely distributed makes or brands, or solicit on a personal preference basis.
- 1802.10 Each contracting officer shall maintain a small purchase source list (or lists, if more convenient). The list shall indicate whether the business is a certified local, small, resident owned or disadvantaged business enterprise, for the purpose of applying preferences to be awarded in accordance with § 4 of the Equal Opportunity for Local, Small and Disadvantaged Business Enterprises Act of 1998, effective April 27, 1999, D. C. Law 12-268, as amended by § 2(c) of the Equal Opportunity for Local, Small and Disadvantaged Business Enterprises Amendment Act of 2000, effective October 4, 2000, D. C. Law 13-169 (D. C. Official Code § 2-217.03(b)).

1803 DETERMINATION OF REASONABLE PRICE AND AWARD

- 1803.1 The contracting officer shall determine that the price to be paid to the successful offeror is fair and reasonable.
- 1803.2 When only one (1) response is received to a request for competitive quotations, or the

price variance between multiple responses is so great that it reflects a lack of adequate competition, the contracting officer shall include a statement in the contract file giving the basis for the determination of a fair and reasonable price.

- 1803.3 The determination that a proposed price is fair and reasonable may be based on the following:
- (a) Competitive quotations;
 - (b) Comparison of the proposed price with (i) prices found reasonable on previous purchases, (ii) current price lists, (iii) catalogs, (iv) advertisements or (v) similar items;
 - (c) Value analysis;
 - (d) The contracting officer's personal knowledge of the item being purchased; or
 - (e) Any other reasonable basis.
- 1803.4 The contracting officer shall establish and maintain records of oral and written price quotations and include the record in the purchase file. The records shall consist of the names of the suppliers contacted and the prices and other terms and conditions quoted by each.
- 1803.5 The contracting officer's records of solicitations shall include, at a minimum, notes of abstracts to show prices, delivery, references to printed price lists used, the vendor or vendors contacted, and other pertinent data.
- 1803.6 The contracting officer shall retain records supporting small purchases for a minimum of three (3) years.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments, in writing, no later than thirty (30) days after the date of publication of this notice in the *D. C. Register*. Hand-delivered comments should be delivered, and mailed comments should be postmarked, no later than thirty (30) days after publication of this notice in the *D. C. Register*. Comments should be delivered or mailed to Herbert R. Tillery, Interim Chief Procurement Officer, Office of Contracting and Procurement, 441 Fourth Street, N.W., Suite 700 South, Washington, D. C. 20001. Copies of the proposed rules may be obtained from the above address.